

## **Section 155-A:5**

**155-A:5 Accessibility Standards for Public Buildings; Purpose and Intent.** – The requirements of this section and RSA 155-A:5-a and RSA 155-A:5-b are intended to establish a system of certification and enforcement for the accessibility standards in the state building code for public buildings. For purposes of this section, public building means any building that is regulated by the accessibility standards contained in the state building code. This section is not intended to enlarge upon or expand any substantive standard of the state building code. This section is intended to apply solely to the new construction, addition, or alteration of a public building that is commenced on or after July 1, 2010 and only to the extent that the new construction, addition, or alteration is regulated by the accessibility standards in the state building code.

**Source.** 2002, 8:3, eff. Sept. 14, 2002. 2009, 285:1, eff. Jan. 1, 2010.

### **Section 155-A:5-a**

#### **155-A:5-a Accessibility Standards for Public Buildings.** –

I. The new construction, addition, or alteration of a public building as described in RSA 155-A:5 and as governed under RSA 155-A:2, I shall be subject to the requirements of this section and RSA 155-A:5-b.

II. Except as provided in paragraph III, the contractor shall obtain and submit to the owner of the public building a written certification from a person qualified under RSA 155-A:5-b that:

- (a) The design drawings or construction drawings for the proposed new construction, addition, or alteration meets the accessibility standards of the state building code; and
- (b) Upon the completion and after inspection, the new construction, addition, or alteration meets the accessibility standards of the state building code.

III. The requirements of paragraph II shall not apply to a public building for which the review of design drawings or construction drawings and inspection of completed work is performed by a municipal building inspector who:

- (a) Satisfies the qualifications under RSA 155-A:5-b;
- (b) Examines the design drawings or construction drawings prior to the commencement of work and inspects the building upon completion of work for compliance with the accessibility standards in the state building code; and
- (c) Provides the governing body of the municipality with a written certification that the design and construction of the building upon completion of work comply with the accessibility standards of the state building code.

IV. Nothing in this section shall be construed as requiring municipalities to inspect and certify public buildings for compliance with accessibility standards. Public buildings located in a municipality that has chosen to authorize its municipal building inspector to inspect and certify shall remain subject to all other provisions of this section.

V. In addition to other enforcement authority granted in this chapter, the protection and advocacy system for New Hampshire, as designated by the governor pursuant to 42 U.S.C. section 15043, shall have standing to enforce the accessibility standards required by this section. If the protection and advocacy system determines that probable cause exists that a public building violates the accessibility certification or inspection requirements of this section, it shall issue a letter to the owner of the building specifically identifying the deficiencies and requesting that the building be brought

into compliance. The owner shall have 30 days to respond to the letter and 270 days to bring the building into compliance. If the owner does not respond, does not agree that there are some or all of the deficiencies asserted, does not agree to bring the building into compliance within the specified time periods, or any other dispute remains as to compliance, either the owner or the protection and advocacy system may file an action in the superior court to determine compliance with this section. The protection and advocacy system may bring the action in its name or in the name of any individual with a physical impairment who is adversely affected by the alleged failure to adhere to the accessibility standards of the state building code, or both. If it is determined by the superior court that the building is not in compliance with the accessibility standards in the state building code, the court shall order that the owner bring the building into compliance. If the protection and advocacy system prevails in such action, it shall be awarded court costs and reasonable attorney's fees from the owner. For purposes of this section, ""prevailing"" is defined to include a judgment by the court, a consent decree, or instances where the owner agrees to make or makes some or all of the requested changes after the filing date of the action.

VI. Any individual with a physical impairment who is adversely affected by the failure to adhere to the requirements of this section shall have a private right of action against the owner pursuant to the procedure established in paragraph V, including the right to court costs and reasonable attorney's fees as the prevailing party.

VII. Any owner of a public building or contractor who is found by a preponderance of the evidence in a proceeding under this section to have knowingly violated the accessibility standards of the state building code shall be subject to a civil penalty. The penalties shall be the same as those established by RSA 155-A:8. All civil penalties shall be deposited into the general fund. The party bringing the action shall be entitled to reasonable attorney's fees and costs if it is determined by the court to be the prevailing party.

**Source.** 2009, 285:2, eff. Jan. 1, 2010.

### **Section 155-A:5-b**

#### **155-A:5-b Accessibility Certifiers and Inspectors; Penalty. –**

I. New Hampshire licensed architects, professional engineers, certified building officials, and master code officials may certify building plans and/or inspect public buildings for compliance with the accessibility standards in RSA 155-A:5 and RSA 155-A:5-a without further examination. Any other person engaged in the business of certifying building plans and/or inspecting public buildings for compliance with accessibility standards required by RSA 155-A:5 and RSA 155-A:5-a shall successfully pass an International Code Council examination that covers the accessibility standards contained in the state building code prior to certifying that a building complies with RSA 155-A:5 and RSA 155-A:5-a. All accessibility certifiers and inspectors shall complete 2 hours of continuing education related to accessibility codes every 3 years and be able to produce proof of continuing education upon request.

II. Whoever falsely claims to be certified under this section through advertising, signage, or other written or oral representation shall be guilty of a violation if a natural person, or guilty of a class B misdemeanor if any other person.

**Source.** 2009, 285:2, eff. Jan. 1, 2010.